

**STEPHEN YELENOSKY**

Judge
(512) 854-9374

DANA LEWIS
Staff Attorney
(512) 854-9892

ANGELA RILEY
Court Operations Officer
(512) 854-9712

345TH DISTRICT COURT
TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767

ALBERT ALVAREZ
Official Reporter
(512) 854-9373

DANIKAE DOETSCH
Court Clerk
(512) 854-5836

July 24, 2012

Ms. Erin Fonken
Mr. Ilan Levin
Environmental Integrity Project
1303 San Antonio Street, Suite 200
Austin, Texas 78701
Via Facsimile: (512)584-8019

Mr. John A. Riley
Bracewell & Giuliani LLP
111 Congress Avenue, Suite 2300
Austin, Texas 78701
Via Facsimile: (512) 472-9123

Mr. Conrad Patrick Morris, Jr.
1002 Cairo
Corpus Christi, Texas 78412
Via Facsimile: (361)992-9317

Ms. Nancy Elizabeth Olinger
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Via Facsimile: (512)320-0052

Mr. Thomas M. Weber
Mr. Matthew W. Baab
McElroy, Sullivan & Miller, LLP
600 Congress Avenue, Suite 3000
Austin, Texas 78701
Via Facsimile: (512) 327-6566

Mr. Terrell W. Oxford
Susman Godfrey, L.L.P.
901 Main Street, Suite 5100
Dallas, Texas 75202
Via Facsimile: (214) 754-1933

Re: Cause No. D-1-GN-11-001364; *Environmental Defense Fund, Inc. et al vs. Texas Commission on Environmental Quality; in the 261st Judicial District Court, Travis County, Texas*

Dear Counsel:

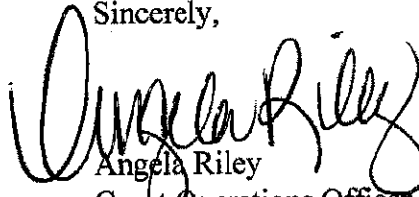
Enclosed please find attached a Final Judgment signed by Judge Yelenosky regarding the above mentioned cause. The original judgment has been filed with the District Clerk's Office.

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Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Riley". The signature is fluid and cursive, with the first name "Angela" being more prominent than the last name "Riley".

Angela Riley
Court Operations Officer, 345th District Court
Travis County, Texas

Enclosure(s) 4 pages including this cover page

Cause No. D-1-GN-11-001364

**ENVIRONMENTAL DEFENSE FUND,
INC., TEXAS CLEAN AIR CITIES
COALITION, SIERRA CLUB, AND
CLEAN ECONOMY COALITION,
Plaintiffs,**

v.

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Defendant,**

v.

**LAS BRISAS ENERGY CENTER, LLC
Defendant-Intervenor**

IN THE DISTRICT COURT OF

Filed in The District Court
of Travis County, Texas

JUL 24 2012 LAM

At 4:00 P. M.
Amalia Rodriguez-Mendoza, Clerk

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

FINAL JUDGMENT

On May 7, 2012, the Court conducted a hearing on the merits in the above-captioned administrative appeal of Defendant Texas Commission on Environmental Quality's ("TCEQ") February 22, 2011, Final Order (the "Final Order") issuing Air Quality Permit Nos. 85013, HAP48, and PSD-TX-1138 (collectively, the "Permit") authorizing construction of the proposed Las Brisas Energy Center ("LBEC") in Corpus Christi, Texas. On July 19, 2012, the Court heard additional argument. Having considered the administrative record, which was admitted into evidence, the Briefs of Plaintiffs Environmental Defense Fund, Texas Clean Air Cities Coalition, Sierra Club and Clean Economy Coalition, the Responses thereto of Defendants TCEQ and Las Brisas Energy Center, LLC ("Las Brisas"), the Replies of Plaintiffs, and the arguments of counsel, the Court hereby rules as follows:

1. TCEQ did not err by not requiring consideration of clean fuels and IGCC as part of the Best Available Control Technology evaluation for the LBEC. *Blue Skies Alliance v. Tex. Comm'n on Env't'l Quality*, 283 S.W.3d 525 (Tex.App.-Amarillo 2009, no pet.)

2. TCEQ did not err by allowing the demonstration of compliance with the PM_{2.5} National Ambient Air Quality Standards ("NAAQS") to be made using the surrogacy policy as allowed by federal rule adopted in 2008. 73 Fed. Reg. 28,321 (May 16, 2008).
3. TCEQ did not err in connection with the method set forth in the permit for monitoring emission limits for particulate matter, since the TCEQ's determination of the adequacy of the method is supported by substantial evidence in the record. That another monitoring method is "proven technology" and the U.S. Environmental Protection Agency ("EPA") recommended it does not place a burden on the TCEQ to articulate why it should not be required.
4. By failing to identify the legal basis of their claim, Sierra Club and Clean Economy Coalition failed to preserve the issue of whether the TCEQ Executive Director's direction to his technical staff regarding the Best Available Control Technology ("BACT") analysis was error. The Court grants the TCEQ's Motion for Partial Summary Judgment as to this issue and dismisses Sierra Club's and Clean Economy Coalition's claims on this point. Moreover, there is no legal basis for the claim and the sufficiency of the BACT analysis is determined by whether it is supported by substantial evidence in the record.
5. The TCEQ erred as a matter of law in failing to require a maximum achievable control technology ("MACT") determination for the LBEC main boilers. When TCEQ issued the Final Order, the EPA had not promulgated a national MACT standard applicable to electric utility steam generating units, and so a case-by-case MACT determination was required. However, EPA has promulgated a MACT standard that all parties agree currently applies to LBEC. MACT is a preconstruction requirement. The EPA's new rule defining petroleum coke as both a fossil fuel and as oil provides a uniform MACT standard that supersedes the case-by-case method. Before commencing construction, Las Brisas must demonstrate that it will comply with the new MACT standard. The Final Order erroneously issues the Permit without requiring any MACT demonstration for the main boilers. Accordingly, TCEQ's Final Order and the Permit violate federal Clean Air Act ("CAA") § 112 (42 USC § 7412), 40 CFR § 63.41, *et seq.*, 30 TAC §§ 116.111 and 116.160(c), and 30 TAC § 116.400, *et seq.*
6. The TCEQ erred as a matter of law by failing to require that Las Brisas demonstrate compliance with the 24-hour PSD Increment for PM₁₀ because demonstrations based on hypothetical, non-binding scenarios for the required material handling cannot supply the "demonstration" of compliance required by CAA § 165 (42 U.S.C. § 7475), 40 CFR § 52.21(k), 30 TAC § 116.111, 30 TAC § 116.160 (incorporating by reference 40 CFR § 52.21(k)) and the Texas State Implementation Plan ("SIP").
7. The TCEQ erred as a matter of law by issuing the Permit in violation of Texas Water Code § 5.228(e). TCEQ's Final Order expressly relies upon air dispersion modeling performed by the TCEQ Executive Director ("ED") correcting errors in Las Brisas' modeling, contravening § 5.228(e)'s statutory prohibition on the ED assisting the

permit applicant in meeting its burden of proof in a hearing before the TCEQ or the State Office of Administrative Hearings.

8. The Court rules that TCEQ erred as a matter of law by failing to require that Las Brisas demonstrate compliance with the 1-hr NAAQS for NO₂ and SO₂ as required pursuant to CAA § 165 (42 U.S.C. § 7475), 40 CFR § 52.21(k), 30 TAC § 101.21, 30 TAC § 116.160 and § 116.161, and the Texas SIP.

For each of the foregoing and independent reasons set out in numbered paragraphs 5, 6, 7

~~and 8 above, the Court reverses the Final Order granting the Permit and remands this matter to~~
TCEQ for further proceedings not inconsistent with the Court's ruling.

All relief not granted herein is denied. This Judgment disposes of all claims, issues and parties herein, and it is final and appealable. All costs shall remain with the party or parties incurring same.

SIGNED the 24 day of July, 2012


Hon. Stephen Yelenosky
Judge Presiding